

Regular Session, 2011

HOUSE BILL NO. 632

BY REPRESENTATIVE HENRY

TAX/TAXATION: Provides the method of calculating taxable income derived from broadcasting film and radio programming which is attributable to activity in La.

1 AN ACT

2 To amend and reenact R.S. 47:287.95(K) and 606(A)(1)(e), relative to corporation income
3 and franchise tax; to provide for the method of determining certain taxable revenue
4 from broadcasting film or radio programming which is attributable to activity in
5 Louisiana; to provide for definitions; to provide for effectiveness; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:287.95(K) and 606(A)(1)(e) are hereby amended and reenacted
9 to read as follows:

10 §287.95. Determination of Louisiana apportionment percent

11 * * *

12 K. Attribution of revenue from television, radio, and other broadcasting.

13 (1) Definitions. For the purposes of this Subsection, the following terms
14 have the following meanings unless the context clearly indicates otherwise:

15 (a) "Broadcast" means transmission by an electronic or other signal
16 conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave
17 guides, fiber optics, satellite transmissions directly or indirectly to viewers and
18 listeners, or by any other means of communications.

19 (b) "Commercial domicile" shall mean the state where management
20 decisions are implemented, which is presumed to be the state where the taxpayer

1 conducts its principal business and thereby benefits from public facilities provided
2 by that state. The location of board of directors' meetings is not presumed to create
3 a commercial domicile at that location.

4 (c) "Customer" shall mean a business or party, such as an advertiser or
5 licensee, that has a contract or agreement directly with the taxpayer under which
6 revenue is derived by such taxpayer.

7 (d) "Film" or "film programming" means all performances, events, or
8 productions intended to be broadcast for visual perception, including but not limited
9 to news, sporting events, plays, stories, or other literary, commercial, educational,
10 or artistic works. Each episode of a series of films shall constitute a separate "film"
11 even if the series relates to the same principal subject.

12 ~~(c)~~ (e) "Radio" or "radio programming" means all performances, events, or
13 productions intended to be broadcast for auditory perception, including but not
14 limited to news, sporting events, plays, stories, or other literary, commercial,
15 educational, or artistic works. Each episode of a series of radio programming shall
16 constitute a separate "radio programming" even if the series relates to the same
17 principal subject.

18 ~~(d)~~ (f) "Subscriber" means the individual residence or other outlet that is the
19 ultimate recipient of the transmission.

20 (2) Gross apportionable income, including license fees, from broadcasting
21 film or radio programming, whether through the public airwaves, by cable, direct or
22 indirect satellite transmission, or any other means of communication, either through
23 a network, including owned and affiliated stations, or through an affiliated,
24 unaffiliated, or independent television or radio broadcasting station, shall be
25 attributed to this state as follows:

26 (a) ~~For~~ Except as otherwise provided by this Subsection, for purposes of
27 computing the apportionment percents provided by Subsections A through F of this
28 Section, the amount of gross apportionable income, including advertising income,
29 attributed to this state from broadcasting film or radio programming shall be

1 determined by multiplying the total gross apportionable income from broadcasting
2 film or radio programming, including advertising revenue, by the audience factor.

3 (b) ~~Except as otherwise provided by this Subsection~~ For purposes of
4 attributing the gross apportionable income earned by a local television or radio
5 station, the audience factor shall be determined by the ratio of the taxpayer's
6 Louisiana viewing or listening audience to their total viewing or listening audience.
7 The audience factor shall be determined based on the books and records of the
8 taxpayer or on published rating statistics. However, the method used to determine the
9 audience factor must be used consistently from year to year and must fairly represent
10 the taxpayer's activity in Louisiana.

11 (c)(i) ~~When broadcasting is through or by~~ For purposes of attributing the
12 gross apportionable income earned by a cable television system, satellite television
13 system, or other arrangement system, hereinafter referred to collectively in this
14 Paragraph as "cable or satellite system", under which ultimate viewers or listeners
15 must pay the cable or satellite system for the right to receive the broadcast, the
16 audience factor shall be the ratio that the subscribers for that ~~cable television system~~
17 ~~or other arrangement~~ cable or satellite system located in Louisiana bears to the total
18 subscribers of that ~~cable television system or other arrangement~~ cable or satellite
19 system if the payment entitles the ultimate viewers or listeners to continuous
20 reception of programming during a subscription period.

21 (ii) If the number of subscribers cannot be accurately determined from the
22 taxpayer's books and records, the audience factor shall be determined based on the
23 applicable year's subscription statistics located in published surveys. However, the
24 source selected to determine the audience factor must be consistently used from year
25 to year and must fairly represent the taxpayer's activity in Louisiana.

26 (iii) If the payment entitles the ultimate viewers or listeners to only discrete
27 episodes or instances of film or radio programming, the audience factor shall be the
28 ratio of the subscribers for such discrete programming located in Louisiana to the
29 total subscribers for such discrete programming. If the number of subscribers for

1 such discrete episodes or instances cannot be accurately determined from the
2 taxpayer's books and records, the audience factor shall be determined based on
3 statistics located in published surveys. However, the source selected to determine
4 the audience factor must be consistently used from year to year and must fairly
5 represent the taxpayer's activity in Louisiana.

6 (d)(i) For purposes of computing the apportionment percent provided in
7 Subsections A through F of this Section, the amount of gross apportionable income
8 attributed to this state from all other film and radio broadcasting shall be determined
9 by multiplying the total gross apportionable income from such film and radio
10 broadcasting by the ratio of income received from Louisiana customers to income
11 received from customers everywhere; however, the gross apportionable income
12 attributable to the state using this ratio shall not be less than twenty-five percent of
13 the amount which would be attributable if calculated using an audience factor as
14 defined in Subparagraph (b) of this Paragraph.

15 (ii) For purposes of this Subparagraph, gross apportionable income includes
16 advertising income and income from cable or satellite systems and local television
17 and radio stations. "Louisiana customers" includes cable or satellite systems, local
18 television and radio stations, and advertisers with a commercial domicile in the state
19 and a contract or agreement directly with the taxpayer under which revenue is
20 derived by such taxpayer. Notwithstanding the provisions of Subparagraph (1)(b)
21 of this Subsection, if the taxpayer's customer is a television or radio station operating
22 in Louisiana, then the commercial domicile of the customer is deemed to be
23 Louisiana. This provision shall have no impact on the tax filing position of the
24 customer.

25 * * *

26 §606. Allocation of taxable capital

27 A. General allocation formula.

28 For the purpose of ascertaining the tax imposed in this Chapter, every
29 corporation subject to the tax is deemed to have employed in this state the proportion

1 of its taxable capital, computed on the basis of the ratio obtained by taking the
2 arithmetical average of the following ratios:

3 (1)

4 * * *

5 (e) Revenue, including license fees, from broadcasting film or radio
6 programming, whether through the public airwaves, by cable, direct or indirect
7 satellite transmission, or any other means of communication, either through a
8 network, including owned and affiliated stations, or through an affiliated,
9 unaffiliated, or independent television or radio broadcasting station, shall be
10 attributed to the state as follows:

11 (i) ~~The~~ Except as otherwise provided in this Subsection, the revenue,
12 including advertising revenue attributed to the state from broadcasting film or radio
13 programming, shall be determined by multiplying total revenue from broadcasting
14 film or radio programming, including advertising revenue, by the audience factor.

15 (ii) ~~Except as otherwise provided by this Subsection~~ For purposes of revenue
16 attributed to the state from a local television or radio station broadcasting film or
17 radio programming, the audience factor shall be determined by the ratio of the
18 taxpayer's Louisiana viewing or listening audience to their total viewing or listening
19 audience. The audience factor shall be determined based on the books and records
20 of the taxpayer or published rating statistics. However, the method used to determine
21 the audience factor must be used consistently from year to year and must fairly
22 represent the taxpayer's activity in Louisiana.

23 (iii) ~~When broadcasting is through or by~~ For purposes of revenue attributed
24 to the state from a cable television system, satellite television system, or other
25 arrangement system broadcasting film or radio programming, hereinafter referred to
26 collectively in this Subparagraph as "cable or satellite system" under which ultimate
27 viewers or listeners must pay the cable or satellite system for the right to receive the
28 broadcast, the audience factor shall be the ratio that the subscribers for that ~~cable~~
29 ~~television system or other arrangement~~ cable or satellite system located in Louisiana

bears to the total subscribers of that ~~cable television system or other arrangement~~
cable or satellite system if the payment entitles the ultimate viewers or listeners to
continuous reception of programming during a subscription period.

(aa) If the number of subscribers cannot be accurately determined from the
taxpayer's books and records, the audience factor shall be determined based on the
applicable year's subscription statistics located in published surveys. However, the
source selected to determine the audience factor must be consistently used from year
to year and must fairly represent the taxpayer's activity in Louisiana.

(bb) If the payment entitles the ultimate viewers or listeners to only discrete
episodes or instances of film or radio programming, the audience factor shall be the
ratio that the subscribers for such discrete programming located in Louisiana bears
to the total subscribers for such discrete programming. If the number of subscribers
for such discrete episodes or instances cannot be accurately determined from the
books and records maintained by the taxpayer, the audience factor shall be
determined on the basis of statistics located in published surveys. However, the
source selected to determine the audience factor must be consistently used from year
to year for that purpose and must fairly represent the taxpayer's activity in Louisiana.

(iv)(aa) The amount of revenue attributed to this state from all other film and
radio broadcasting shall be determined by multiplying the total revenue from such
film and radio broadcasting by the ratio of revenue received from Louisiana
customers to revenue received from customers everywhere; however, such revenue
attributable to the state using this ratio shall not be less than twenty-five percent of
the amount which would be attributable if calculated using an audience factor as
defined in Item (ii) of this Subparagraph.

(bb) For purposes of this Subparagraph, revenue includes advertising
revenue and revenue from cable or satellite systems and local television and radio
stations. Louisiana customers are cable or satellite systems, local television and
radio stations, and advertisers with a commercial domicile in the state and a contract
or agreement directly with the taxpayer under which revenue is derived by the

1 taxpayer. Notwithstanding the provisions of Subitem (bb) of Item (v) of this
2 Subparagraph, if the taxpayer's customer is a television or radio station operating in
3 Louisiana, then the commercial domicile of the customer is deemed to be Louisiana.
4 This provision shall have no impact on the tax filing position of the customer.

5 (v) Definitions. For the purposes of this Subsection, the following terms
6 have the following meanings unless the context clearly indicates otherwise:

7 (aa) "Broadcast" means transmission by an electronic or other signal
8 conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave
9 guides, fiber optics, satellite transmissions, directly or indirectly to viewers and
10 listeners, or by any other means of communications.

11 (bb) "Commercial domicile" shall mean the state where management
12 decisions are implemented, which is presumed to be the state where the taxpayer
13 conducts its principal business and thereby benefits from public facilities provided
14 by that state. The location of board of directors' meetings is not presumed to create
15 a commercial domicile at that location.

16 (cc) "Customer" shall mean a business or party, such as an advertiser or
17 licensee, that has a contract or agreement directly with the taxpayer under which
18 revenue is derived by such taxpayer.

19 (dd) "Film" or "film programming" means all performances, events, or
20 productions intended to be broadcast for visual perception, including but not limited
21 to news, sporting events, plays, stories, or other literary, commercial, educational,
22 or artistic works. Each episode of a series of films shall constitute a separate "film"
23 even if the series relates to the same principal subject.

24 ~~(cc)~~ (ee) "Radio" or "radio programming" means all performances, events,
25 or productions intended to be broadcast for auditory perception, including but not
26 limited to news, sporting events, plays, stories, or other literary, commercial,
27 educational, or artistic works. Each episode of a series of radio programming shall
28 constitute a separate "radio programming" even if the series relates to the same
29 principal subject.

1 ~~(dd)~~ (ff) "Subscriber" means the individual residence or other outlet that is
2 the ultimate recipient of the transmission.

3 * * *

4 Section 2. The provisions of this Act are severable. It is intended that if any
5 provision of this Act, or the application thereof to any person or circumstance is held invalid
6 under the Constitution of Louisiana or of the United States by a final and nonappealable
7 judgment, then such provision shall be ineffective to the extent of such invalidity without
8 invalidating the remaining provisions of this Act.

9 Section 3. The provisions of this Act shall be applicable for all corporate income tax
10 periods beginning on or after January 1, 2012, and for all corporation franchise tax periods
11 beginning on or after January 1, 2013.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry

HB No. 632

Abstract: Provides the method of calculating the amount of gross apportionable income earned from broadcasting film and radio programming which is attributable to activity in La. and subject to corporation income and franchise tax.

Present law establishes the methods for attributing income to Louisiana for purposes of determining corporation income and franchise tax sales ratios of taxpayers who broadcast film and radio programming.

Present law provides definitions for purposes of proposed law.

Proposed law adds definitions for "commercial domicile" and "customer".

Present law provides the calculation used to determine the amount of gross apportionable income attributable to La. for a taxpayer broadcasting film or radio programming. The amount shall be determined by multiplying the total gross apportionable income by an audience factor, which is the ratio of the taxpayer's La. viewing or listening audience to the total viewing or listening audience.

Present law provides specifically for the calculation used for income of a cable television system or "other arrangement" under which viewers or listeners pay for the right to receive the broadcast. The audience factor is the ratio of that system's subscribers located in La. to the total subscribers of that system.

Proposed law retains present law and adds provisions specific to taxpayers which broadcast film and radio programming, but are not local television or radio stations, cable television systems, or satellite television systems, all of which are currently provided for in present law.

Proposed law provides the calculation used for such "other" taxpayers to determine the amount of gross apportionable income attributable to La. from broadcasting film or radio programming. The amount shall be determined by multiplying the total gross apportionable income by the ratio of income received from customers commercially domiciled in La. to income received from customers everywhere. Further, the amount of gross apportionable income attributable to La. resulting from use of the foregoing ratio shall not be less than 25% of the income that would be attributable to La. using the audience factor provided for in present law.

Provisions of proposed law are severable.

Provisions of proposed law are applicable to all corporate income tax periods beginning on or after Jan. 1, 2012, and for all corporation franchise tax periods beginning on or after Jan. 1, 2013.

(Amends R.S. 47:287.95(K) and 606(A)(1)(e))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Reduced the minimum amount of gross apportionable income that would be attributed to La. using the audience factor ratio from 75% to 25%.
2. Added a severability clause.
3. Changes the effective date from taxable periods beginning on or after Jan. 1, 2012, to corporate income tax periods beginning on or after Jan. 1, 2012, and corporation franchise tax periods beginning on or after Jan. 1, 2013.